January 21, 2019

John M. Robertson, Executive Officer
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Delivered via electronic mail to AgNOI@waterboards.ca.gov

Dear Executive Officer Robertson,

On behalf of our grower and vintner members in the Central Coast, our organizations appreciate the opportunity to comment on the Conceptual Regulatory Requirement Options for Ag Order 4.0.

Wine Institute[1] (WI) is the public policy advocacy association of California wineries, representing over 1,000 wineries and affiliated businesses around the state. Paso Robles Wine Country Alliance[2] (PRWCA) is a non-profit trade association representing over 200 wineries and 40,000 vineyard acres along with hospitality and related business members in the Paso Robles Wine Country. Monterey County Vintners and Growers Association[3] (MCVGA) is the regional trade association for winegrowing and winemaking industries in Monterey County.

The Central Coast is home to over 100,000 acres of cultivated vineyards, located throughout the many prime winegrowing areas in the region. Our industry is a noted leader in addressing environmental challenges, and many of our members are proud to hold comprehensive vineyard sustainability certifications.

36,000 vineyard acres on the Central Coast are now SIP Certified[4], benefiting from that program's educational resources and technical assistance, as well as eligibility for a lower Tier ranking under the current Ag Order 3.0. Central Coast vineyards also participate in other vineyard sustainability programs, such as CERTIFIED SUSTAINABLE[5] (through the California Sustainable Winegrowing Alliance (CSWA)), which included 44,879 certified acres in Region 3 and 149,922 statewide acres in 2018. (*Note: some vineyards choose to become certified through more than one program.)*

[1] http://wineinstitute.org
[2] https://pasowine.com
[3] https://montereywines.org
[4] http://www.sipcertified.org
[5] https://www.sustainablewinegrowing.org/certified-sustainable-winegrowing.php

These award-winning programs and certifications were crafted and continue to evolve with extensive participation from growers, industry experts, academics, and policymakers alike. Furthermore, certifications are independently verified through rigorous third-party processes.

This comment letter was written with considerable input from our members, who have shown a strong, ongoing interest in the Order development process and its outcome. We appreciate the efforts by Water Board staff to actively encourage winegrower input at public stakeholder workshops as well as at a 'focused group' meeting held for vineyards on December 13, 2018 in Paso Robles. We look forward to continuing an open dialogue with you and your staff as the Order takes shape over the coming months.

Our comments are drawn from our members' experiences farming in the region, as well as their perspectives on previous Ag Orders and other regulatory programs. We primarily comment on the aspects of the conceptual options that are most relevant to vineyards and which our members have identified as a priority.

However, we are also aware of the ideas presented in the 'Ag Alternative Order' comments submitted by a group of other organizations and do not directly comment on many of the issues in the Conceptual Regulatory Options tables that are already addressed by that proposal.

Our members share the Board's objectives of improving and protecting water quality in the Central Coast Region. Our comments are meant to assist the Board in developing a regulatory approach that ensures positive environmental outcomes while supporting the continued economic vitality of Central Coast vineyards and wineries.

A. RECOMMENDED PRINCIPLES FOR THE ORDER

Vineyards inherently present a low risk to water quality across many potential pollutants, and numerous widely-adopted management practices further lower the risk of surface water and groundwater pollution from winegrowing activities.

Vineyards apply low amounts of nitrogen and other nutrients, using tests and targeted timing to apply fertilizers only when and where they are necessary. Tightly-controlled vineyard irrigation means very little to no applied water is discharged, helping to prevent the mobilization of nutrients and pesticides below the root zone or into surface waters. Cover crops, buffer strips, and other common vegetative and cultural controls help prevent, slow and capture soil erosion and nutrient losses during storm events.

Timelines, documentation, and monitoring and reporting under the Order should be at a level consistent with the lower risk presented by vineyard operations.

Although we do not comment on every aspect of the Conceptual Options tables, we propose some over-arching principles that the Order should embody:

1. **The Order should require only the collection, analysis, and/or reporting of data that is directly necessary to ensuring beneficial uses in the watersheds are protected.** We recognize that this Order must meet certain precedential requirements. However, the Board should exercise its discretion and regulate water quality in ways that minimize, to the extent reasonable, the costs and burdens of the program on dischargers. Group monitoring is strongly preferable to individual monitoring and, consistent with the 'Ag Alternative' proposal, we believe a robust group monitoring program can help to achieve the requirements and objectives of the Order.

2. **The Order should maximize growers' ability to use existing documentation and information to satisfy monitoring, reporting, and/or management planning requirements.** For example, relevant data or management practice information that is already being submitted to other regulatory agencies (e.g. California Department of Pesticide Regulation) might be used to help address some of the Board's water quality concerns. A focus on inter-agency communication and collaboration to address shared goals could help achieve this. Additionally, management plans and documentation created and/or submitted as part of the process of voluntary sustainability certification might be used to meet management planning requirements of the Order. (We discuss this concept at length in Section D, below.)

3. **Management plans created for compliance with the Order should remain on-farm.** Making an individual operation's management plans viewable by the public serves no clear public interest, and it would overwhelm Board resources to receive and process all dischargers' detailed documentation. Precedent allows for 'farm plans' to be kept onsite and accessible to Board staff during an inspection.

4. **The Order should prioritize based on risk to water quality, specifically by considering <u>ranch characteristics</u> in evaluating risk, in addition to location characteristics as proposed in the staff framework.** Both the Eastern San Joaquin Agricultural Order[6] ("ESJ Order") and the *Coastkeeper et al.* decision[7] acknowledge the Board's discretion in how to prioritize and apply certain aspects of the Order's requirements. The Board is <u>not</u> required to subject all operations to the same requirements under the same timelines, as is contemplated in 'Option 2' of the Conceptual Options tables.

[6] SWRCB Order WQ 2018-0002, p. 27; p. 34
[7] *Coastkeeper v. State Water Res. Control Bd., Cal. App. 3d Dist*., Sept. 18, 2018

5. **To build meaningful, long-lasting change, growers need incentives.** Below, we propose some ways to incentivize and promote voluntary actions that will extend the impact of the Order in achieving water quality benefits.

These proposed principles can help the Board administer the Order with maximum efficiency by taking full advantage of existing efforts and resources in the Region.

B. THE PRIORITIZATION STRUCTURE SHOULD CONSIDER MULTIPLE VARIABLES AND IMPLEMENT REQUIREMENTS ACCORDING TO THE RISK AN OPERATION POSES TO WATER QUALITY

The Board's Conceptual Options document asks if all farming operations should be "*treated the same in terms of requirements and the implementation timing for these requirements*". In discussing our responses to this question, we also put forward some ideas for the Order's prioritization structure. We note that the Conceptual Options document proposes very few details as to how a prioritization structure might work.

We strongly recommend that the Order's requirements vary based on the actual risk an operation is likely to pose to water quality. Simply put, operations that are unlikely to threaten water quality for a given constituent should not be subject to the same requirements as operations that the Board considers likely to pose a threat to water quality for that constituent. It would be a misallocation of both grower and Board resources were all operations subject to the same requirements.

The staff report prepared for the November 8-9, 2018 Board Meeting[8] seemed to imply that all operations would eventually be 'phased in' to the same set of requirements: "With phasing, during the Order's term, monitoring and reporting requirements will apply to an increasing number of ranches in other areas of the region, such that eventually all ranches are complying with the same requirements" (12). In subsequent conversations with staff, we have come to understand it would not necessarily be the case that all operations in all areas would ultimately be subject to the exact same requirements. In keeping with our proposed Principles #1 and #4 above, we urge the Board to use its discretion in determining how to apply the various requirements in ways necessary to achieving the objectives of the Order.

We also strongly recommend that the timing of when requirements apply, including the frequency of monitoring and reporting, should vary based on the actual risk an operation is likely to pose to water quality. The Board should focus its initial efforts and resources on priority areas and operations. Where defensible, allowing time for operations to find the best ways to comply is

[8] Item 5, "Staff Report for Regular Meeting of November 8-9, 2018".

better than rushing them to compliance and inadvertently encouraging rash management decisions.

For groundwater-related requirements in particular, timelines for improvement should reflect the 'time lag' needed to see improved results in groundwater samples, as well as the complexity of groundwater challenges. Furthermore, to the extent that Sustainable Groundwater Management Act (SGMA) activities and implementation in the region might overlap with activities under this Order, we encourage the Board to collaborate with the relevant agencies to seek synergies and reduce the possibility of duplicative or conflicting actions or requirements.

Under previous Ag Orders, prioritization was achieved through the creation of three 'Tiers', with Tier placement based on a set of ranch characteristics. We note that the Board need not throw out the Tier structure wholesale and can certainly continue to use elements of this approach; although the trial court in the *Coastkeeper et al.* decision criticized the use of Tiers, the Court of Appeal concluded that "the trial court's finding as to the inadequacy of the tiering structure is not supported by substantial evidence."

If the Board chooses to move away from 3.0's Tier approach so that ranch *location* becomes the driving consideration in the prioritization structure, we recommend that ranch *characteristics* also remain a prioritization factor. A more complicated prioritization structure is still preferable to an approach that does not adequately recognize the real differences between operations.

To that end, a 'matrix' of relevant risk variables could be explored as a way to prioritize operations under Ag Order 4.0. In addition to relevant location variables, the prioritization of a given ranch – and thus its requirements and timelines – could be adjusted based on other factors such as:

- **Crop(s) grown** (and associated inputs in the growing system): this can have a significant bearing on an operation's potential to pollute;
- **Likelihood/quantity of discharge**: operations unlikely to produce surface runoff or infiltrate contaminants to groundwater clearly pose a low threat to water quality;
- **Approved sustainability certification(s)**: see discussion in Section D, below.

Additionally, the prioritization structure/matrix should allow for the 'ramping down' of requirements in cases where an operation is shown over time to pose a lower threat. For example, based on 'x' samples that are significantly below a threshold of concern, Operation A might be able to:

- Reduce reporting frequency AND/OR
- Use estimates in place of measurements

In this case, Operation A would have its prioritization 'score' modified to reflect the lowered risk it poses.

C. VINEYARDS PRESENT A LOW RISK OF NITRATE CONTAMINATION AND SHOULD BE EXEMPT FROM NITROGEN REPORTING REQUIREMENTS

The ESJ Order gives the Board discretion in how it applies the precedential nitrogen reporting requirements:

> We recognize that there may be categories of uniquely-situated growers for whom the specific nitrogen management requirements made precedential in the following sections of this order are unnecessary because applied nitrogen is not expected to seep below the root zone in amounts that could impact groundwater, and is further not expected to discharge to surface water. (34)

To reasonably accommodate these circumstances, the ESJ Order allows "Any category of Members (such as growers of a particular crop or growers in a particular area)" to "make a **demonstration**, for approval by the relevant regional water board, that nitrogen applied to the fields does not percolate below the root zone in an amount that could impact groundwater and does not migrate to surface water through discharges, including drainage, runoff, or sediment erosion" (34; emphasis added).

Given the low nitrogen application rates in vineyards, as well as irrigation management practices that limit or prevent the mobilization of applied nutrients, we believe vineyards can meet the standard set forth by the ESJ Order and qualify for an exemption to the nitrogen reporting requirements.[9]

However, the standard for a 'demonstration' in the ESJ Order is not clear, and the language explicitly defers to the relevant regional board's discretion and approval. **Therefore, we request that the Board provide some guidance to grower groups as to what would constitute a 'demonstration' for this purpose, and the process for bringing such a claim before the Board.**

We are aware of multiple grower groups that may seek the exemption offered by the ESJ Order; the Board may wish to host stakeholder discussions on this topic.

[9] According to the California Department of Food and Agriculture's (CDFA) Fertilizer Research and Education Program (FREP) Database: "Grapevines have a low N fertilizer requirement compared to most other crops." http://apps.cdfa.ca.gov/frep/docs/Grapevines.html#Nitrogen

D. CONTINUE TO RECOGNIZE SUSTAINABILITY CERTIFICATIONS AS AN INCENTIVE

Sustainability certification programs produce demonstrable benefits to water quality and are a critical asset towards achieving water quality objectives in the Central Coast region. In the context of Ag Order 4.0, they can offer unique advantages to both growers and the Board.

These programs not only verify that Best Management Practices (BMPs) are in place, they also provide the resources and guidance growers need to implement BMPs most effectively. Certifications sometimes require quantitative data collection and analysis (i.e. tests or estimates to determine actual crop nutrient or water needs) to help guide farm management decisions, track performance over time and ensure positive environmental outcomes. Furthermore, sustainability programs move growers in the direction of continuous improvement, offering an iterative approach in ways a regulatory framework cannot.

Ag Order 3.0 rightly recognizes SIP Certification for vineyards as an incentive and describes a process for other certification programs to receive recognition from the Board. We appreciate Board staff and some Board members' comments that they would like to a find a way to continue this incentive. We strongly urge the Board to include similar provisions, including a clear process for the Board to review and approve additional programs, in Ag Order 4.0.

The Board has repeatedly recognized the vital outreach and education services provided by SIP Certified. We note that educational components are now a precedential requirement from the ESJ Order. Additionally, sustainability programs' focus on management practice adoption is entirely consistent with Nonpoint Source Pollution Control Program policy ('NPS Policy') as well as the objectives of this Board. Sustainability programs can help ensure that management practices are implemented appropriately and can also play a role in evaluating BMP effectiveness. Sustainability certifications are one tool the Board can use to make reasonable assumptions and assessments as to the Order's effectiveness in protecting water quality, in conjunction with other tools such as group monitoring of watershed conditions.

Furthermore, sustainability programs independently verify that their standards are being met, potentially reducing administrative costs for both the Board and growers. Using certification programs to gather and/or verify relevant information provides a clear administrative benefit to the Water Board and takes advantage of the pre-existing relationships between growers and the certification programs.

Under Ag Order 4.0, sustainability certifications could be used to lower the 'priority ranking' of an operation for the program areas where that sustainability program best addresses the Order's objectives. For example, a sustainability certification that primarily addresses nitrates and

pesticides but not erosion could qualify its growers for a lower 'priority ranking' under Conceptual Options Tables 1, 2, and 3, but not Table 4. This would involve the Board finding that, based on BMPs, plans, and/or reporting in place through a certification program, group monitoring for that pollutant is sufficient to quantitatively track progress, and individual monitoring at those 'certified' ranches is not necessary unless other variable(s) in the 'priority ranking' structure indicate otherwise.

As proposed above, 'Sustainability Certification' should be one of the variables in a 'matrix' used to prioritize operations for both the Order's requirements and its time schedules. Some examples of how this concept could work in practice are as follows:

- A sustainability certification independently verifies that a robust erosion control plan is in place at Operation B. This qualifies Operation B for a lower 'priority ranking' – and thus lower or less frequent reporting requirements – under the 'Sediment and Erosion Management for Surface Water Protection' (Table 4) program.
- A sustainability certification independently verifies that Operation C tracks applied nitrogen. This removes the need for Operation C to individually report its nitrogen application data directly to the Board (Tables 1 and 2).
- A sustainability certification independently verifies that certain pesticides of concern are not applied at Operation D. This eliminates or reduces the frequency of any applicable toxicity testing/reporting requirements at Operation D (Table 3).

In the case of groundwater protection (Tables 1 and 3), water samples may not reflect the effects of practice adoption for years or even decades. The Board therefore has an interest in tracking practice adoption during that 'time lag'. Sustainability certifications are a simplified and streamlined way for growers to demonstrate, and for the Board to verify, that practices protective of groundwater are in place and implemented effectively during the 'time lag' before groundwater quality can be reasonably expected to have improved.

Where the Board determines that a sustainability certification program does not sufficiently address one of the Order's objectives in a way that brings regulatory relevance, the Board could work with the programs to identify potential program additions or changes that could close the 'gaps'. In other words, sustainability certification programs may be willing to create 'add-on' program components or make modifications to their programs in order to more closely align with the Order's requirements.

Below, we offer some additional ideas for how a certification program could assist with implementation of the Order, using the example of CERTIFIED SUSTAINABLE for purposes of illustration. Using the *California Code of Sustainable Winegrowing, 3rd Edition* ('The Code'), which includes 140 vineyard assessment criteria[10], CERTIFIED SUSTAINABLE vineyards

[10] The full Code is viewable online at: https://www.sustainablewinegrowing.org/swpworkbook.php

develop and implement an integrated sustainable farming plan that places the protection and conservation of water resources at the forefront. Management decisions at CERTIFIED SUSTAINABLE vineyards are guided by science, industry best practice, and a variety of metrics to reduce runoff and minimize inputs. The program utilizes third-party, independent auditors to annually verify that stringent certification requirements are met; in 2017, SCS Global Services concluded that the program demonstrates overall compliance with an assessment framework based on the requirements of internationally recognized standards and assurance systems, including ISO/IEC Guide 59:1994, ISO/IEC 17065:2012, and ISEAL Credibility Principles.

Of relevance to **Irrigation and Nutrient Management** (Tables 1 and 2), CERTIFIED SUSTAINABLE vineyards must track applied nitrogen and implement certain Code criteria that address nutrient management. Certification prerequisite practices include Code Workbook Criteria 4-3, which requires that the results of plant tissue analysis and other factors are used to guide nutrient applications, and Code Workbook Criteria 4-4, which requires that nitrogen is only applied when needed and when vines can best utilize it.[11] Conceivably, a certification program could:

- verify that applied nitrogen is tracked, AND/OR
- assist growers in reporting nitrogen tracking data to the Board, AND/OR
- verify that applied nitrogen does not exceed 'x' lbs/acre[12], AND/OR
- verify that practices or tracking that constitute the equivalent to an 'Irrigation Nutrient Management Plan' is in place, AND/OR
- provide aggregated information to the Board about management practice adoption (potentially including quantitative data), AND/OR
- provide targeted education and outreach to subsets of ranches, AND/OR
- conduct group BMP effectiveness studies (potentially including quantitative data).

Of relevance to **Pesticide Management for Surface Water and Groundwater Protection** (Table 3), CERTIFIED SUSTAINABLE maintains an evolving list of restricted materials and requires/verifies certain Integrated Pest Management approaches are in place. Certification prerequisite practices include Code Workbook Criteria 6-5, which requires that cultural practices such as cover crops and leaf removal are considered for pest management, and Code Workbook Criteria 6-20, which requires that pest management decisions are made with awareness of herbicide leaching potential. Conceivably, a certification program could:

- verify that practices or tracking that constitute the equivalent to a 'Pesticide Management Plan' are in place, AND/OR
- verify that pesticides or materials of concern to the Water Board are not applied or are not applied above a designated rate, AND/OR

[11] For background, see CSWA's *Certified Sustainable Annual Report – 2017 – Appendix*, at https://www.sustainablewinegrowing.org/swpworkbook.php

[12] If the Board opts to identify a recommended application rate that is anticipated to be protective of water quality.

    - (*Note: a certification program might opt to evolve its list of restricted materials to capture materials of concern as they become priorities for the Board.)*
- provide targeted education and outreach to subsets of ranches.

Of relevance to **Sediment and Erosion Management for Surface Water Protection** (Table 4), CERTIFIED SUSTAINABLE verifies some practices that are known to control erosion and sediment discharges in vineyards. Conceivably, a certification program could:

- verify that practices or tracking that constitute the equivalent to a 'Sediment and Erosion Management Plan' are in place, AND/OR
- create an 'add-on' module/template to assist operations in the development of sufficient erosion control measures, AND/OR
- provide targeted education and outreach to subsets of ranches.

In all cases above, the benefits/incentives to the grower could include:

- **Avoid duplicative tracking/reporting:** growers can use existing documentation to meet relevant Order requirements
- **Lower or eliminate individual monitoring/reporting requirements:** if verified BMPs are reasonably assumed to be effective (unless the Board requires follow-up action to identify individual dischargers)
- **Lower the prioritization ranking of a certified operation:** i.e. based on practice or plan adoption and lower risk, operations could be 'phased in' to Order requirements over a longer timeline or, where defensible, not 'phased in' at all to certain Order components.

These examples are not an exhaustive list, but are intended to demonstrate the myriad opportunities for the Board to recognize sustainability certification programs under Ag Order 4.0 in ways that can produce real benefits to water quality and for the agricultural community.
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Thank you again for the opportunity to comment. We look forward to participating in the Order development process, and value your openness in hearing and considering the perspectives of our members. Should you have any questions, please do not hesitate to contact us.

Sincerely,

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